# **EXHIBIT L**

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Mark: CRÈME DE LYS

#### CRÈME DE LYS

US Serial Number: 85045359

Application Filing Date: May 21, 2010

US Registration Number: 3890298

Registration Date: Dec. 14, 2010

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 14, 2010 Publication Date: Sep 28, 2010

#### **Mark Information**

Mark Literal Elements: CRÉME DE LYS

Standard Character Claim: Yes The mark consists of standard characters without claim to any particular font style, size, or color,

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Translation: The English translation of the words "CREME DE LYS" in the mark is "CREAM OF THE LILY".

#### **Goods and Services**

Note: The following symbols indicate that the registrant/owner has amended the goods/services

Brackets [ ] indicate deleted goods/services.

Double parenthesis (( )) identify any goods/services not dia med in a Section 15 affidavit of
 Asterisks \* \*identify additional (new) wording in the goods/services

For: Alcoholic beverages except beers

International Class(es): 033 - Primary Class

U.S Class(es): 047, 049

Class Status: ACTIVE Basis: 1(a)

First Use: Aug. 02, 2010

Use in Commerce: Aug. 02, 2010

#### **Basis Information (Case Level)**

Filed Use: No Filed ITU: Yes Filed 44D: No Filed 44E: No Filed 66A: No

Currently Use: Yes Currently ITU: No Currently 44D: No Currently 44E: No

Currently 66A: No

Amended Use: No Amended ITU: No Amended 44D: No Amended 44F: No

Filed No Basis: No Currently No Basis: No

#### **Current Owner(s) Information**

Owner Name: Diageo Chateau & Estate Wines Company

Owner Address: 240 Gateway Road West Napa, CALIFORNIA 94558

UNITED STATES

Legal Entity Type: LORPORATION

State or Country Where CALT ORNIA

Organized:

### Attorney/Correspondence Information

Attorney of Record

Attorney Name: Drave Plast

Attorney Primary Email Indemarks@diagen.com Address:

Attorney Email No Authorized:

Correspondent

Correspondent DIANE PLAUT Name/Address: DIAGEO NORTH AMERICA, INC

801 MAIN AVE NORWALK, CONNECTICUT 06851-1127 UNITED STATES

Phone: 203-229-2100

Fax: 203-845-5925

Correspondent e-mail. trademarks@diageo.com

Correspondent e-mail No Authorized:

Domestic Representative - Not Found

#### **Prosecution History**

Date	Description	Proceeding Number			
Apr. 26, 2012	NOTICE OF SUIT				
Dec. 14, 2010	REGISTERED-PRINCIPAL REGISTER				
Sep. 28, 2010	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED				
Sep. 28, 2010	PUBLISHED FOR OPPOSITION				
Aug. 26, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	70468			
Aug. 25, 2010	ASSIGNED TO LIE	70468			
Aug. 10, 2010	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED				
Aug. 09, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER				
Aug. 09, 2010	USE AMENDMENT ACCEPTED	82088			
Aug. 07, 2010	AMENDMENT TO USE PROCESSING COMPLETE	88889			
Aug. 07, 2010	USE AMENDMENT FILED	88889			
Aug. 06, 2010	TEAS AMENDMENT OF USE RECEIVED				
Aug. 06, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	88889			
Aug. 06, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889			
Aug. 06, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED				
Aug. 06, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED				
Jul. 12, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325			
Jul. 12, 2010	NON-FINAL ACTION E-MAILED	6325			
Jul. 12, 2010	NON-FINAL ACTION WRITTEN	82088			
Jul. 09, 2010	ASSIGNED TO EXAMINER	82088			
May 26, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM				
May 25, 2010	NEW APPLICATION ENTERED IN TRAM				
TM Staff and Location Information					

### TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Dec 14, 2010

#### Case3:11-cv-05639-MEJ Document4 Filed11/22/11 Page1 of 1

♠ AO 120 (Rev. 2/99)				
P.0	. Patent & Trademark O. Box 1450 ria, VA 22313-1450	Office	REPORT ON FILING OR DETERMIN ACTION REGARDING TRADEMA	ATION OF AN A PATENT OR
In Compli	ance with 35 § 290 and/or	15 U.S C. § 111	6 you are hereby advised that a court action	has been
filed in the U.S. Di	strict Court Northern D	istrict of Califo	mia on the following  Patents or	X Trademarks:
DOCKET NO. CV 11-05639 MEJ	DATE FILED	U.S. DI	STRICT COURT	•.
PLAINTIFF	11/21/11		Northern District of Calif DEFENDANT	ornia
JACKSON FAMILY	WINES INC		DIAGEO NORTH AMERICA	INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	t t	HOLDER OF PATENT OR TR	ADEMARK
1-3,393,573				
23,890,298				
3				
4				
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	e-entitled case, the follow	ving patent(s) h	we been included:	
DATE INCLUDED	INCLUDED BY	Amendment	☐ Answer ☐ Cross Bill	☐ Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK		HOLDER OF PATENT OR TR	ADEMARK
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In the abov	e—entitled case, the follow	ving decision ha	is been rendered or judgement issued:	
DECISION/JUDGEMENT				
CLERK	A - May 1, 4, 45 ( a to 11) have 1 100 - 100 have 1 100 a to 110 a	(BY) DEPUTY	CLERK	DATE
Richard W.	Wieking		Gloria Acevedo	November 22, 2011

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

<b>.</b>		
ı	COOLEY LLP JOHN W. CRITTENDEN (CA #101634)	ORIGINAL
2	101 California Street, 5th Floor	FILED
3	San Francisco, CA 94111-5800 Telephone: (415) 693-2000	NOV 2 1 2011
4	Facsimile: (415) 693-2222	RICHARD W. WIEKING CLERK U.S. DISTRICT COURT, NGGTHERN BISTRIDT OF BRILLERRING
5	COOLEY LLP PETER J. WILLSEY (pro hac vice pending)	Nêdîtêrîn Bizîtiret be êvelebenia
6	NISHAN KOTTAHAČHCHI (CA #221612) 777 6 <sup>th</sup> Street, NW	
7	Washington, DC 20001 Telephone: (202) 842-7800	
8	Facsimile: (202) 842-7899	4)
9	Attorneys for Plaintiffs Jackson Family Wines, Inc. and LC TM Holdir	ngs LLC
10	, i	
11	UNITED STATES	S DISTRICT COURT
12	NORTHERN DISTR	RICT OF CALIFORNIA
13		The state of the s
14	Ų	V 11 5639
15	JACKSON FAMILY WINES, INC. and LC TM HOLDINGS, LLC,	Case No.
16	Plaintiffs,	COMPLAINT FOR:
17	V.	(1) FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C.
18	DIAGEO NORTH AMERICA, INC. and	§1114;
19	DIAGEO CHATEAU & ESTATE WINES CO.,	(2) UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
20	Defendants.	UNDER 15 U.S.C. §1125
20	Defendants.	(3) TRADEMARK DILUTION UNDER CAL. BUS. & PROF. CODE
22		§14247
23		(4) UNFAIR COMPETITION UNDER CAL, BUS. & PROF. CODE §17200,
23		ET SEQ.
		DEMAND FOR JURY TRIAL
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28 Cooley LLP		
ATTORNEYS AT LAW SAN FRANCISCO		1. Complaint
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Plaintiffs Jackson Family Wines, Inc. and LC TM Holdings LLC (collectively, "Plaintiffs") complain and allege against Diageo North America, Inc. and Diageo Chateau & Estate Wines Co. (collectively, "Defendants") as follows:

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#### **THE PARTIES**

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1. Plaintiff Jackson Family Wines, Inc. ("Plaintiff" or "JFW") is a corporation organized under the laws of the State of Delaware with its principal place of business at 421 Aviation Blvd., Santa Rosa, CA 95403. JFW is the exclusive licensee of the LA CREMA® trademark.

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2. Plaintiff LC TM Holdings LLC ("Plaintiff" or "LC TM") is a limited liability corporation organized under the laws of the State of Delaware with its principal place of business at 421 Aviation Blvd., Santa Rosa, CA 95403. LC TM is the owner and licensor of the LA CREMA® trademark.

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3. Defendant Diageo North America, Inc. ("Defendant" or "DNA") is a corporation organized under the laws of the State of Connecticut with its principal place of business at 801 Main Avenue, Norwalk, CT 06851. On information and belief, DNA produces and distributes wine products under the CRÈME DE LYS trademark and is a co-owner, licensor, or licensee of the CRÈME DE LYS trademark.

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the CRÈME DE LYS trademark.

4. Defendant Diageo Chateau & Estate Wines Co. ("Defendant" or "DCEW") is a

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corporation organized under the laws of the State of California with its principal place of business at 240 Gateway Road West, Napa, CA 94558. On information and belief, DCEW owns the wineries that produce CRÈME DE LYS wine products and is a co-owner, licensor, or licensee of

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the CRÈME DE LYS trademark.

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5. This action arises under the federal trademark statute (the "Lanham Act"), 15 U.S.C. §1051 et seq.

JURISDICTION AND VENUE

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6. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 1367.

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- 7. Plaintiffs are informed and believe, and on that basis allege, that this Court has personal jurisdiction over Defendants because (i) Defendant DCEW has its principal place of business in the State of California and this judicial district; (ii) Defendants conduct business within the State of California and this judicial district; (iii) Defendants have caused their wine products to be advertised, promoted, and sold under the CRÈME DE LYS trademark in the State of California and this judicial district; (iv) the causes of action asserted in this Complaint arise out of Defendants' contacts with the State of California and this judicial district; and (v) Defendants have caused tortious injury to Plaintiffs in the State of California and this judicial district.
- 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because (i) Defendant DCEW has its principal place of business in the State of California and this judicial district; (ii) Defendants conduct business within the State of California and this judicial district; (iii) Defendants have caused their wine products to be advertised, promoted, and sold under the CRÈME DE LYS trademark in the State of California and this judicial district; (iv) the causes of action asserted in this Complaint arise out of Defendants' contacts with the State of California and this judicial district; and (v) Defendants have caused tortious injury to Plaintiffs in the State of California and this judicial district.

#### INTRADISTRICT ASSIGNMENT

 This is an Intellectual Property Action to be assigned on a district wide basis pursuant to Civil L.R. 3-2(c).

#### **FACTUAL BACKGROUND**

#### PLAINTIFFS' BUSINESS AND THE LA CREMA® TRADEMARK

10. JFW is a leading producer and distributor of highly acclaimed, premium wine varietals marketed and sold under the trademark LA CREMA®. Plaintiffs have dedicated substantial efforts and resources over a number of years to developing and producing their renowned LA CREMA® wines featuring the Burgundian varietals Chardonnay and Pinot Noir and also including Gewurztraminer, Pinot Gris, Pinot Noir Rosé, Riesling, Syrah, and Viognier. LA CREMA® wines are hand-crafted to reflect the distinct character of five of the finest California appellations: Russian River Valley, Los Carneros, Anderson Valley, Sonoma Coast,

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and Monterey. As a result of their efforts and acclaimed wine making, Plaintiffs' wines are widely considered by consumers and industry experts to be among the finest in the United States.

- LA CREMA® wines are distributed in all 50 states in the United States. 11.
- 12. Since at least as early as October of 1987, Plaintiffs have continuously used the inherently distinctive trademark LA CREMA® to market and sell their wines throughout the United States.
- 13. Plaintiffs have devoted substantial time, effort, and resources to the development and extensive promotion of the LA CREMA® trademark and the wines offered thereunder. As a result of Plaintiffs' efforts and the superior quality of the wines offered under the LA CREMA® trademark, the public has come to recognize and rely upon the LA CREMA® trademark as an indication of high quality wines and the LA CREMA® trademark enjoys substantial goodwill in the marketplace and is a valuable asset of Plaintiffs.
- On October 10, 2000, the United States Patent & Trademark Office ("PTO") 14. issued U.S. Trademark Registration No. 2,393,573 for the mark LA CREMA in connection with "wines" (the "LA CREMA registration"), which is currently owned by LC TM. A true and correct copy of the LA CREMA registration certificate is attached as Exhibit A.
- The LA CREMA registration is in full force and effect on the PTO's Principal Register and gives rise to presumptions in favor of LC TM with respect to validity, ownership, and exclusive rights to use the LA CREMA® mark throughout the United States.
- LC TM filed affidavits under Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065, and the LA CREMA registration is incontestable.
- 17. LA CREMA® wines are enormously popular and have received numerous accolades and awards over the years.
- 18. LA CREMA® wines have annually outsold all other Chardonnays and Pinot Noirs priced over \$15 in the United States since 2002. Currently, LA CREMA® Chardonnay is the #1 selling Chardonnay priced above \$12 and LA CREMA® Pinot Noir is the #1 selling Pinot Noir priced above \$11 in the United States.

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- 19. The LA CREMA® Chardonnay and Pinot Noir wines have been ranked among the top 10 most popular wines by Wine & Spirits Magazine since 2002. In April 2011, Wine & Spirits Magazine named LA CREMA® the second most popular Pinot Noir, the fourth most popular Chardonnay, and the fifth best selling wine brand in America's restaurants.
- 20. LA CREMA® also receives widespread attention from third party wine critics and media. Since 1992, LA CREMA® Chardonnay and Pinot Noirs have received over thirty scores of 90 points or above from leading wine publications. In 2011 alone, LA CREMA® Chardonnay and Pinot Noirs were awarded at least six scores of 90 points or above by Wine Enthusiast magazine and at least four scores of 90 points or above from the Wine Advocate newsletter.
- 21. As a result of Plaintiffs' widespread use of the LA CREMA® mark in the United States, extensive advertising and promotion of the wines sold in connection with the LA CREMA® trademark, and the continuous and unsolicited media coverage, the LA CREMA® trademark enjoys a high degree of consumer recognition and has become a famous mark.

#### DEFENDANTS' USE OF THE CRÈME DE LYS TRADEMARK

- 22. Defendants use the mark CREME DE LYS in connection with wines that compete directly with Plaintiffs' LA CREMA® wines.
- 23. The CRÈME DE LYS trademark is highly similar to the LA CREMA® trademark, given that the term CRÈME is the dominant portion of the CRÈME DE LYS trademark and the term CREMA is the dominant portion of the LA CREMA® trademark. The English translation of both CRÈME and CREMA is "cream." Further, Defendants use a larger font for the term CRÈME than the terms DE LYS on their wine bottles, as shown by the side by side comparison of Plaintiffs' and Defendants' respective wines attached as Exhibit B, which further emphasizes the "cream" portion of the mark. The trade dress adopted by Defendants for their CRÈME DE LYS wine labels is also strikingly similar to the trade dress first adopted by Plaintiffs for their LA CREMA® wine labels in terms of color, font, and design. Defendants' use of a parchment colored label and an all capital letter dark colored font for the brand name is highly reminiscent of the LA CREMA® label and further causes the overall commercial impression of the CRÈME DE LYS trademark to appear highly similar to the LA CREMA® trademark.

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- 24. The CRÈME DE LYS trademark is nothing more than a knockoff of the LA CREMA® trademark. Plaintiffs are informed and believe, and on that basis allege, that Defendants adopted the CRÈME DE LYS trademark with the intention of capitalizing on the fame of the LA CREMA® trademark, particularly with respect to the Pinot Noir and Chardonnay wine varietals products for which LA CREMA® is the market leader in sales.
- 25. Plaintiffs are informed and believe, and on that basis allege, that Defendants adopted the confusingly similar CRÈME DE LYS mark in an attempt to falsely associate their wines with Plaintiffs in order to trade on the substantial and valuable goodwill that Plaintiffs have built in the marketplace under the famous LA CREMA® trademark.
- 26. On December 14, 2010, the PTO issued to DCEW U.S. Trademark Registration No. 3,890,298 for the mark CRÈME DE LYS in connection with "alcoholic beverages except beers" (the "CRÈME DE LYS registration"). The CRÈME DE LYS registration claims a first use date of August 2, 2010. A true and correct copy of the CRÈME DE LYS registration certificate is attached as Exhibit C.
- 27. Defendants' CRÈME DE LYS wines are offered through the same marketing and trade channels and to the same target customers as Plaintiffs' LA CREMA® wines. For example, both Plaintiffs' LA CREMA® wines and Defendants' CRÈME DE LYS wines frequently appear together on restaurant wine lists, as shown on Exhibit D, where Plaintiffs' and Defendants' wines comprise half of the Chardonnay selection at two different restaurants in Sonoma, California and Brentwood, California. In addition, Plaintiffs and Defendants have the same broker or distributor of their respective wine products in at least twenty states; thus, Plaintiffs' and Defendants' wine products are even more likely to appear in the same stores and restaurants in those states.
- 28. Plaintiffs began using the LA CREMA® trademark over twenty years prior to Defendants' adoption of the confusingly similar CRÈME DE LYS trademark. Furthermore, Plaintiffs obtained a U.S. registration for the LA CREMA trademark ten years prior to Defendants' adoption of the confusingly similar CRÈME DE LYS trademark. The LA CREMA® trademark also acquired recognition in the consuming public and became famous well prior to Defendants' use of the CRÈME DE LYS trademark.

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- 29. Defendants' use of the CRÈME DE LYS trademark in connection with wines is likely to cause confusion in the marketplace and infringes Plaintiffs' valuable rights in the LA CREMA® trademark.
- 30. Defendants' use of a trademark that is highly similar to Plaintiffs' LA CREMA® trademark creates a false suggestion of an affiliation or connection between Defendants and Plaintiffs.
- 31. Plaintiffs are not affiliated with Defendants or the wines that Defendants offer in the United States.
- 32. Plaintiffs have not consented to, sponsored, endorsed, or approved of Defendants' use of the confusingly similar CRÈME DE LYS trademark in connection with the production, marketing, or sale of any products or services.
- 33. Defendants' use of the CRÈME DE LYS trademark dilutes the famous LA CREMA® trademark.
- 34. On information and belief, Defendants' actions are willful and reflect an intent to confuse consumers and profit from the goodwill and consumer recognition associated with Plaintiffs and their LA CREMA® trademark.
- 35. Plaintiffs sent a demand letter to DNA on or about August 31, 2011 informing DNA of Plaintiffs' valuable trademark rights and demanding that DNA cease all use of the CRÈME DE LYS trademark. A true and correct copy of the August 31, 2011 demand letter is attached as Exhibit E.
- 36. Defendants' failure to comply with Plaintiffs' demands demonstrates a deliberate intent to continue to wrongfully compete with Plaintiffs and to willfully infringe Plaintiffs' rights in the LA CREMA® trademark.

#### FIRST CAUSE OF ACTION

#### FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

37. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 36 of this Complaint as if fully set forth here.

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- 38. The LA CREMA® trademark is an inherently distinctive, strong, valid, and protectable trademark owned by Plaintiffs.
- 39. Plaintiffs are informed and believe, and on that basis allege, that Defendants have marketed and sold in commerce wines bearing the confusingly similar CRÈME DE LYS trademark.
- 40. Defendants' use of the CRÈME DE LYS trademark in connection with their wine products is likely to cause confusion, mistake, or deception as to the source or sponsorship of the products and/or is likely to lead the consuming public to believe that Plaintiffs have authorized, approved, or somehow sponsored Defendants' wine products.
- 41. The actions of Defendants described above and specifically, without limitation, the Defendants' use of the confusingly similar CRÈME DE LYS trademark on their wines constitutes trademark infringement in violation of 15 U.S.C. § 1114.
- 42. Plaintiffs have been, and will continue to be, damaged and irreparably harmed by the actions of the Defendants, which will continue unless Defendants are enjoined by this Court. Plaintiffs have no adequate remedy at law in that the amount of damage to Plaintiffs' business and reputation and the diminution of the goodwill of the LA CREMA® trademark is difficult to ascertain with specificity. Plaintiffs are therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116.
- 43. Plaintiffs are entitled to recover damages in an amount to be determined at trial and the profits made by Defendants on the sales of CRÈME DE LYS wine products. Furthermore, Plaintiffs are informed and believe, and on that basis alleges, that the actions of Defendants were undertaken willfully and with the intention of causing confusion, mistake, and deception, making this an exceptional case entitling Plaintiffs to recover treble damages, reasonable attorneys' fees, and costs pursuant to 15 U.S.C. § 1117, as well as prejudgment interest.

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#### SECOND CAUSE OF ACTION

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### FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN

UNDER 15 U.S.C. § 1125

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of this Complaint as if fully set forth here.

Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 43

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Defendants have used in commerce and without Plaintiffs' authorization or 45. consent the CRÈME DE LYS trademark in connection with wines, and the CRÈME DE LYS trademark is highly similar to the registered and common law LA CREMA trademark.

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Defendants' actions as described herein are likely to cause confusion and 46. deception among the consuming public and is likely to lead the consuming public to believe that Plaintiffs have authorized, approved, or somehow sponsored Defendants' use of the CREME DE LYS trademark in connection with wines.

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> Defendants' actions constitute unfair competition and false designation of origin in 47. violation of 15 U.S.C. § 1125(a).

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Plaintiffs have been, and will continue to be, damaged and irreparably harmed by 48. the actions of the Defendants, which will continue unless Defendants are enjoined by this Court. Plaintiffs have no adequate remedy at law in that the amount of damage to Plaintiffs' business

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and reputation and the diminution of the goodwill of the LA CREMA® trademark is difficult to ascertain with specificity. Plaintiffs are therefore entitled to injunctive relief pursuant to 15

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U.S.C. § 1116.

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and profits made by Defendants on the sales of CRÈME DE LYS wines. Furthermore, Plaintiffs are informed and believe, and on that basis alleges, that the actions of Defendants were

Plaintiffs are entitled to recover damages in an amount to be determined at trial

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undertaken willfully and with the intention of causing confusion, mistake, deception, making this

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an exceptional case entitling Plaintiffs to recover treble damages, reasonable attorneys' fees, and

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costs pursuant to 15 U.S.C. § 1117, as well as prejudgment interest.

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1 THIRD CAUSE OF ACTION 2 TRADEMARK DILUTION UNDER CAL. BUS. & PROF. CODE § 14247 50. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 49 3 4 of this Complaint as if fully set forth here. 5 The LA CREMA trademark is distinctive and famous within the meaning of Cal. 6 Bus. & Prof. Code § 14247. 7 52. Defendants' use of the CRÈME DE LYS trademark began after the LA CREMA 8 trademark became famous. 9 Defendants continued use of the CREME DE LYS trademark is likely to cause 53. 10 injury to Plaintiffs' business and reputation and the dilution of the distinctive quality of Plaintiffs' 11 famous LA CREMA trademark in violation of Cal. Bus. & Prof. Code § 14247. 12 54. Plaintiffs have been, and will continue to be, damaged and irreparably harmed by 13 the actions of the Defendants, which will continue unless Defendants are enjoined by this Court. 14 Plaintiffs have no adequate remedy at law in that the amount of damage to Plaintiffs' business 15 and reputation and the diminution of the goodwill of the LA CREMA® trademark is difficult to 16 ascertain with specificity. Plaintiffs' are therefore entitled to injunctive relief pursuant to Cal. 17 Bus. & Prof. Code § 14247. 18 55. On information and belief, the actions of Defendants described herein were and 19 continue to be deliberate and willful. Plaintiffs are therefore entitled to recover damages in an 20 amount to be determined at trial, profits made by Defendants on the sales of their wine products, 21 and the costs of this action pursuant to Cal. Bus. & Prof. Code §§ 14247 and 14250. 22 **FOURTH CAUSE OF ACTION** 23 UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200, ET SEQ. 24 56. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 55 25 of this Complaint as if fully set forth here. 26 57. By the acts described herein, Defendants have engaged in unlawful and unfair 27 business practices that have injured and will continue to injure Plaintiffs' business and property in 28 violation of Cal. Bus. & Prof. Code § 17200, et seq.

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- 58. Defendants' acts alleged herein have caused monetary damages to Plaintiffs in an amount to be proven at trial.
- 59. Defendants' acts have caused, and will continue to cause, irreparable injury to Plaintiffs and their business, reputation, and trademarks, unless and until Defendants are permanently enjoined.
- 60. As a direct and proximate result of Defendants' conduct alleged herein, Defendants have been unjustly enriched and should be ordered to disgorge any and all profits earned as a result of such unlawful conduct.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

- A. That Plaintiffs be granted preliminary and permanent injunctive relief under 15 U.S.C. § 1051 et seq. and California Business and Professions Code §§ 14247 and 17200 et seq; specifically, that Defendants and all of their respective officers, agents, servants, representatives, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and all other persons acting in concert with them be preliminarily and permanently enjoined from (i) using the CRÈME DE LYS mark, or any mark confusingly similar, in connection with the marketing, promotion, advertising, sale, or distribution of any wine product and (ii) from any acts of infringement of Plaintiffs' LA CREMA® trademark.
- B. That Defendants file, within ten (10) days from entry of an injunction, a declaration with this Court signed under penalty of perjury certifying the manner in which Defendants have complied with the terms of the injunction;
- C. That Defendants be adjudged to have violated 15 U.S.C. § 1114 by infringing Plaintiffs' LA CREMA® trademark;
- D. That Defendants be adjudged to have violated 15 U.S.C. § 1125(a) for unfairly competing against Plaintiffs by using a false designation of origin for Defendants' wine products;
- E. That Defendants be adjudged to unlawfully and unfairly compete against Plaintiffs under the laws of the State of California, Cal. Bus. & Prof. Code § 17200, et seq.;
  - F. That Defendants be adjudged to have caused dilution of the LA CREMA mark

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11. Complaint

under the laws of the State of California, Cal. Bus. & Prof. Code § 14247; 1 2 G. That Plaintiffs be awarded Defendants' profits derived by reason of said acts, or as 3 determined by said accounting; That Plaintiffs be awarded three times Defendants' profits and three times of all 4 5 Plaintiffs' damages, suffered as a result of Defendants' willful, intentional, and deliberate acts in 6 violation of the Lanham Act, as well as Plaintiffs' costs, attorneys' fees, and expenses in this suit 7 under 15 U.S.C. § 1117; 8 I. That Plaintiff be awarded damages in an amount sufficient to compensate it for the 9 damage caused by Defendants' unfair competition under Cal. Bus. & Prof. Code § § 17200 et seq; 10 J. That Plaintiffs be awarded three times Defendants' profits and three times 11 Plaintiffs' damages suffered as a result of the willful, intentional, and deliberate acts in violation 12 of Cal. Bus. & Prof. Code §§ 14247 and 14250; 13 K. That the United States Patent and Trademark Office be ordered to cancel U.S. Trademark Registration No. 3,890,298 for the mark CREME DE LYS; 14 15 That Plaintiffs be granted prejudgment and post judgment interest; L. 16 M. That Plaintiffs be granted costs associated with the prosecution of this action; and 17 N. That Plaintiffs be granted such further relief as the Court may deem just and 18 equitable. 19 **DEMAND FOR JURY TRIAL** 20 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a 21 trial by jury of all issues triable of right by a jury. 22 23 24 25 26 27 28 COOLEY LLP ATTORNEYS AT LAW 12. COMPLAINT

, 1 2	Dated: November 21, 2011
3	COOLEY LLP JOHN W. CRITTENDEN (CA #101634)
4	COOLEY LLP JOHN W. CRITTENDEN (CA #101634) PETER J. WILLSEY (pro hac vice pending) NISHAN KOTTAHACHCHL (CA #221612)
5	0012
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7	John W. Crittenden (CA #101634)
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Cooley LLP Attorneys at Law San Francisco	13. Complaint



## CRÈME DE LYS

DIAGEO CHATEAU & FSTATF WINES COMPANY (CALIFORNIA CORPORATION) Reg. No. 3,890,298

240 GATEWAY ROAD WEST

Registered Dec. 14, 2010 NAPA, CA 94558

Int. Cl.: 33 FOR: ALCOHOLIC BEVERAGES EXCEPT BEERS, IN CLASS 33 (U.S. CLS. 47 AND 49)

FIRST USE 8-2-2010, IN COMMERCE 8-2-2010. **TRADEMARK** 

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-PRINCIPAL REGISTER

TICULAR FONT, STYLE, SIZE, OR COLOR.

THE ENGLISH TRANSLATION OF THE WORDS "CRÈME DE LYS" IN THE MARK IS

"CREAM OF THE LILY".

SER NO 85-045.359, FILED 5-21-2010 JANICE KIM, EXAMINING ATTORNEY



#### Case 3:11-cv-05639-EMC Document 176-12 Filed 02/04/14 Page 19 of 60

From: TMOfficialNotices@USPTO.GOV

Sent: Tuesday, September 28, 2010 00:37 AM

To: trademarks@diageo.com

Subject: Official USPTO Notice of Publication: Serial Number 85045359

#### NOTICE OF PUBLICATION

Serial Number: 85-045,359

Mark: CRÉME DE LYS(STANDARD CHARACTER MARK)

International Class(es): 033

Applicant: Diageo Chateau & Estate Wines Company

**Attorney Reference Number:** 

The mark identified above has been published in the *Trademark Official Gazette* (OG) on Sep 28, 2010. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a certificate of registration should issue.

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

- 1. Click on the following link or paste the URL into an internet browser: http://www.uspto.gov/web/trademarks/tmog/20100928\_OG.pdf#page=1
- 2. Wait for the total OG to download completely (as indicated on bottom of OG page).
- 3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
- **4.** Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 85-045,359, e.g.
- 5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

## Trademark Snap Shot Publication & Issue Review Stylesheet (Table presents the data on Publication & Issue Review Complete)

ON	/10	IJ	VI	HV	V

SERIAL NUMBER	85045359	FILING DATE	2 to 2 to 300	05/21/2010
REG NUMBER	0000000	REG DATE	r recovered reservoir construction of	NA
REGISTER	PRINCIPAL	MARK TYPE	· .	TRADEMARK
INTL REG #	N/A	INTL REG DATE	of thurbon on	N/A
TM ATTORNEY	KIM, JANICE	L.O. ASSIGNED		103

#### **PUB INFORMATION**

RUN DATE	08/27/2010				
PUB DATE	09/28/2010				
STATUS	681-PUBLICATION/ISSI	JE REVIEW COMPLETE			
STATUS DATE	08/26/2010	· ········ · ·	* *		
LITERAL MARK ELEMENT	CRÉME DE LYS				
DATE ABANDONED	WA	DATE CANCELLED	w 1500 ddd 6 dd - 1605 - 150 dd - 150 dg 150 150 150 150 150 150 N/A		
SECTION 2F	NO	SECTION 2F IN PART	NO		
SECTION 8	, NO	SECTION B IN PART	NO		
SECTION 15	NO	REPUB 12C	N/A		
RENEWAL FILED	NO	RENEWAL DATE	N/A		
DATE AMEND REG	N/A	even and the			

#### FILING BASIS

FIL	ED BASIS	CURRE	NT BASIS	AME	NDED BASIS
1 (a)	NO	1 (a)	YES	1 (a)	NO
1 (b)	YES	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
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#### MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	CRÈME DE LYS
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MARK DRAWING CODE				4-STANDARD CHARACTER MARK			
COLOR DRAWING FLAG				NO			
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INTERNATIONAL CLASS	033	FIRST USE DATE	08/02/2010	FIRST USE IN COMMERCE DATE	08/02/2010	CLASS STATUS	6-ACTIVE
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TRANSLATION				The English translation of the words "CREME DE LYS" in the mark is CREAM OF THE LILY.			
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08/07/2010	AUPC	į I	AMENDME	NT TO USE PRO	CESSING CO	MPLETE	013
08/07/2010	IUAF	s	USE AMEN	OMENT FILED			012
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08/06/2010	TEME		TEAS/EMAIL CORRESPONDENCE ENTERED 010				

08/06/2010	CRFA	1	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
08/06/2010	TROA	ı	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
08/06/2010	TROA	1	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
07/12/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
07/12/2010	GNRT	F	NON-FINAL ACTION E-MAILED	005
07/12/2010	CNRT	R	NON-FINAL ACTION WRITTEN	004
07/09/2010	DOCK	ם	ASSIGNED TO EXAMINER	003
05/26/2010	NWOS	<b>E</b>	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
05/25/2010	NWAP	•	NEW APPLICATION ENTERED IN TRAM	001

## CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Diane Plaut
CORRESPONDENCE ADDRESS	DIANE PLAUT DIAGEO NORTH AMERICA, INC. 801 MAIN AVE NORWALK, CT 06851-1127
DOMESTIC REPRESENTATIVE	NONE

# CRÈME DE LYS

# Trademark Snap Shot AAU Processing Stylesheet (Table presents the data on AAU Processing Complete)

#### **OVERVIEW**

SERIAL NUMBER	85045359	FILING DATE	05/21/2010
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG#	N/A	INTL REG DATE	N/A
TM ATTORNEY	KIM, JANICE	L.O ASSIGNED	103

#### PUB INFORMATION

RUN DATE	· 08/10/2010
PUB DATE	N/A
STATUS	680-APPROVED FOR PUBLICATION
STATUS DATE	08/09/2010
LITERAL MARK ELEMENT	CRÉME DE LYS

DATE ABANDONED	* ************************************	N/A	DATE CANCELLED	N/A
SECTION 2F	) 	NO	SECTION 2F IN PART	NO
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#### FILING BASIS

FI	LED BAS	IS	CURRE	NT BASIS	AMEN	AMENDED BASIS				
1 (a)	*	NO	1 (a)	YES	1 (a)	NO				
1 (b)	\$	YES	į́ 1 (b)	NO	1 (b)	NO				
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NO BASIS	NO		NO BASIS	NO	,	•				

#### MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	CRÈME DE LYS
MARK DRAWING CODE	4-STANDARD CHARACTER MARK

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07/12/2010	GNRT	F	NON-FINAL ACTION E-MAILED	005
07/12/2010	CNRT	R	NON-FINAL ACTION WRITTEN	004
07/09/2010	DOCK	D	ASSIGNED TO EXAMINER	003
05/26/2010	NWOS	•	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
05/25/2010	NWAP	1	NEW APPLICATION ENTERED IN TRAM	001

#### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY Diane Plaut
;
CORRESPONDENCE ADDRESS DIANE PLAUT
DIAGEO NORTH AMERICA, INC.
801 MAIN AVE NORWALK, CT 06851-1127
the in the man way of the speciment of t
DOMESTIC REPRESENTATIVE NONE

# CRÈME DE LYS

From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, August 10, 2010 00:09 AM

To: trademarks@diageo.com

Subject: Trademark Senal Number 85045359 : Official USPTO Notice of Acceptance of Amendment to Allege Use

#### NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE

Serial Number: 85-045,359

Mark: CRÉME DE LYS(STANDARD CHARACTER MARK)
Owner: Diageo Chateau & Estate Wines Company

Reference Number:

The USPTO has accepted the Amendment to Allege Use (AAU) filed for the trademark application identified above as meeting the minimum requirements of 37 C.F.R. § 2.76(e). The application will be returned to the examining attorney for a substantive review of the AAU.

**WARNING:** The filing of the AAU does **not** relieve the applicant of the duty to file a response to any outstanding Office action or to take any other action required in the case, including filing a Notice of Appeal.

For further information, including information on filing and maintenance requirements for U.S. trademark applications and registrations and required fees, please consult the USPTO website at <a href="www.uspto.gov">www.uspto.gov</a> or call the Trademark Assistance Center at 1-800-786-9199.

To check the status of an application, go to http://tarr.uspto.gov/.

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#### **OVERVIEW**

SERIAL NUMBER	85045359	FILING DATE	05/21/2010
REG NUMBER	0000000	REG DATE	, NA
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	i N/A	INTL REG DATE	N/A
TM ATTORNEY	KIM, JANICE	L.O. ASSIGNED	103

#### **PUB INFORMATION**

RUN DATE	08/10/2010										
PUB DATE	N/A										
STATUS	680-APPROVED FOR PUBLICATION										
STATUS DATE	08/09/2010										
LITERAL MARK ELEMENT	CRÉME DE LYS										
DATE ABANDONED	N/A	DATE CANCELLED	N/A								
SECTION 2F	NO	SECTION 2F IN PART	NO								
SECTION 8	NO	SECTION 8 IN PART	NO								
SECTION 15	NO	REPUB 12C	NA								
RENEWAL FILED	NO	RENEWAL DATE	N/A								
DATE AMEND REG	WA										

#### FILING BASIS

FI	LED BASIS	CURRE	NT BASIS	AMENDED BASIS				
1 (a)	NO	1 (a)	YES	1 (a)	NO			
1 (b)	YES	1 (b)	NO	1 (b)	NO			
44D	i NO	44D	NO	44D	NO			
44E	5 NO	44E	NO	44E	NO			
66A	NO	66A	NO	1	€			
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#### MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	CRÈME DE LYS
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	MARK DRAWING CODE 4-STANDARD CHARACTER MARK					ARK	
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ADDRESS				240 Gateway Ro Napa, CA 94558	ad West	9 BF 1-5 -110-4	ee
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CITIZENSHIP				California	ay an war to y y agy	NOT WORK WITH A LODGE TO MAKE WITH IN THE	manyarman mass. Was son 3 to
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		GC	OODS AND	SERVICES			
INTERNATIONAL CLASS				033	. /1 . / / /	.,,, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	,,, ,, ,, ,,,
DESCRIPTION TEXT				Alcoholic bevera	ges except bee	irs	~
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INTERNATIONAL CLASS	· · ·	RST USE ATE	08/02/2010	FIRST USE IN COMMERCE	08/02/2010	CLASS (	3-ACTIVE
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DATE 08/10/2010 08/09/2010	AAUA	ENT TYPE E	NOTICE OF USE E-MAII	ON HISTORY ON ACCEPTANCE	OF AMENDME	NT TO ALLEGE	ENT NUM
DATE 08/10/2010 08/09/2010 08/09/2010	AAUA CNSA	ENT TYPE E	NOTICE OF USE E-MAII APPROVED USE AMEN	ON HISTORY ON ACCEPTANCE LED OFOR PUB - PRI	OF AMENDME NCIPAL REGIS	NT TO ALLEGE STER	ENT NUM 016 015
DATE 08/10/2010 08/09/2010 08/09/2010 08/07/2010	AAUA CNSA IUAA	ENT TYPE E O	NOTICE OF USE E-MAII APPROVED USE AMEN AMENDME	ON HISTORY ON ACCEPTANCE LED OFOR PUB - PRI	OF AMENDME NCIPAL REGIS	NT TO ALLEGE STER	016 015 014
DATE 08/10/2010 08/09/2010 08/09/2010 08/07/2010	AAUA CNSA IUAA AUPC	ENT TYPE E O P	NOTICE OF USE E-MAII APPROVED USE AMEN AMENDMEI	CREAM OF THE ON HISTORY ON ACCEPTANCE LED FOR PUB - PRI OMENT ACCEPT	OF AMENDME NCIPAL REGISTED CESSING COM	NT TO ALLEGE STER	016 015 014 013
DATE  08/10/2010  08/09/2010  08/09/2010  08/07/2010  08/07/2010  08/06/2010	AAUA CNSA IUAA AUPC IUAF	ENT TYPE E O P	NOTICE OF USE E-MAII APPROVED USE AMEN AMENDME USE AMEN TEAS AME	ON HISTORY ON ACCEPTANCE LED OFOR PUB - PRI OMENT ACCEPT NT TO USE PRO OMENT FILED	OF AMENDME NCIPAL REGIS ED CESSING COM	NT TO ALLEGE STER MPLETE	016 015 014 013 012
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08/06/2010	TROA	1	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
07/12/2010	GNRN	0	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
07/12/2010	GNRT	F	NON-FINAL ACTION E-MAILED	005
07/12/2010	CNRT	R	NON-FINAL ACTION WRITTEN	004
07/09/2010	DOCK	ם	ASSIGNED TO EXAMINER	003
05/26/2010	NWOS	1	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
05/25/2010	NWAP	1	NEW APPLICATION ENTERED IN TRAM	001

#### **CURRENT CORRESPONDENCE INFORMATION**

ATTORNEY	Diane Plaut
CORRESPONDENCE ADDRESS	DIANE PLAUT DIAGEO NORTH AMERICA, INC. 801 MAIN AVE NORWALK, CT 06851-1127
DOMESTIC REPRESENTATIVE	NONE

# CRÈME DE LYS

\*\*\* User:jkim4 \*\*\*

#	Total	Dead	Live	Live	Status/	Search
	Marks	Marks	Viewed	Viewed	Search	
			Docs	Images	Duration	
01	2601	N/A	0	0	0:06	*{"ck"}re\$m*[bi,ti] not dead[ld]
02	859	N/A	0	0	0:05	*1{"iy"}1\${"iey"}*[bi,ti] not dead[ld]
03	1	0	1	0	0:01	1 and 2
04	283	0	283	0	0:03	2 and "033"[cc]

Session started 8/9/2010 10:53:08 AM
Session finished 8/9/2010 10:56:35 AM
Total search duration 0 minutes 15 seconds
Session duration 3 minutes 27 seconds
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Sent to TICRS as Serial Number: 85045359

# Trademark Snap Shot Amendment & Mail Processing Stylesheet (Table presents the data on Amendment & Mail Processing Complete)

OV	ИΕ.	R	V	1	H.	u	Ì

SERIAL NUMBER	85045359	FILING DATE		05/21/2010
REG NUMBER	0000000	REG DATE	A American Commence of the Com	N/A
REGISTER	PRINCIPAL	MARK TYPE		TRADEMARK
INTL REG#	N/A	INTL REG DATE	,	N/A
TM ATTORNEY	KIM, JANICE	L.O. ASSIGNED	* 1 % ** **	103

#### **PUB INFORMATION**

RUN DATE	08/07/2010	08/07/2010				
PUB DATE	N/A					
STATUS	661-RESPONSE AFTER	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED				
STATUS DATE	08/06/2010					
LITERAL MARK ELEMENT	CRÈME DE LYS					
DATE ABANDONED	N/A	DATE CANCELLED	N/A			
SECTION 2F	NO	SECTION 2F IN PART	NO			
SECTION 8	NO	SECTION 8 IN PART	NO			
SECTION 15	NO	REPUB 12C	N/A			
RENEWAL FILED	NO	RENEWAL DATE	N/A			
DATE AMEND REG	N/A					

#### **FILING BASIS**

F	ILED BASIS	CURRE	NT BASIS	AMEN	DED BASIS
1 (a)	; NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	¹ 1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NÓ
66A	NO	66A	NO		· w
NO BASIS	NO	NO BASIS	NO		

#### MARK DATA

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STANDARD CHARACTER MARK	YES
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	GG	OODS AN	D SERVI	CES CLASSIF	ICATION		
INTERNATIONAL CLASS		FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS 6	-ACTIVE
CHANGE IN REGI		ELLANEC	OUS INFO	DRMATION/ST	ГАТЕМЕ	NTS	
TRANSLATION	Condemned States advance surfaced shallow medicings. Mrs. developed	adagaspan akir Valakonu kanadarik kabuluk kenduluk kenduluk k	galang gam an ang gar to the No.	The English translation of CRÉME DE LYS in the mark is CREAM OF THE LILY.			
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DATE	ENT CD	TYPE	DESCRIP	PTION			ENT NUM
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08/06/2010	TROA	i l	TEAS RE	SPONSE TO OFFI	CE ACTION	RECEIVED	008
08/06/2010	TROA	i	TEAS RE	SPONSE TO OFFI	CE ACTION	RECEIVED	007
07/12/2010	GNRN	0	NOTIFICATION OF NON-FINAL ACTION E-MAILED 0			006	
07/12/2010	GNRT	F	NON-FIN	AL ACTION E-MAIL	_EO		005
07/12/2010	CNRT	; R	NON-FIN	AL ACTION WRITT	EN		004
07/09/2010	DOCK	D	ASSIGNE	D TO EXAMINER			003
05/26/2010	NWOS	. 1	NEW API	PLICATION OFFICE	SUPPLIED	DATA ENTERED	002

05/25/2010 NWAP	I NEW APPLICATION ENTERED IN TRAM 001
CURR	NT CORRESPONDENCE INFORMATION
ATTORNEY	Diane Plaut
CORRESPONDENCE ADDRESS	DIANE PLAUT DIAGEO NORTH AMERICA, INC. 801 MAIN AVE NORWALK, CT 06851-1127
DOMESTIC REPRESENTATIVE	NONE  ** A Proposition of the Control of the Contro

## CRÈME DE LYS

PTO Form 15c3 (Re + 9.2695) 5745 No. 4601 6404 (Exp. 1173/22011)

## Trademark/Service Mark Amendment to Allege Use (15 U.S.C. Section 1051(c))

#### The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85045359
LAW OFFICE ASSIGNED	LAW OFFICE 103
EXTENSION OF USE	NO
MARK SECTION	
MARK	CRÈME DE LYS
OWNER SECTION	
NAME	Diageo Chateau & Estate Wines Company
STREET	240 Gateway Road West
CITY	Napa
STATE	California
ZIP/POSTAL CODE	94558
COUNTRY	us
GOODS AND/OR SERVICES SE	ECTION
INTERNATIONAL CLASS	033
CURRENT IDENTIFICATION	Alcoholic beverages except beers
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	08/02/2010
FIRST USE IN COMMERCE DATE	08/02/2010
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT  \IMAGEOUT 11\850\453\85045359\xml6\ AAU0002.JPG
SPECIMEN DESCRIPTION	a photograph of the goods
REQUEST TO DIVIDE	NO
PAYMENT SECTION	

NUMBER OF CLASSES IN USE	<b>1</b>			
SUBTOTAL AMOUNT JALLEGATION OF USE FEEJ	100			
TOTAL AMOUNT	100			
SIGNATURE SECTION	7.2.1. 1.1.3.2.2 (1.7) 7.1.1 (1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.			
DECLARATION SIGNATURE	/Diane Plaut/			
SIGNATORY'S NAME	Dianc Plaut			
SIGNATORY'S POSITION	Attorney of record, Connecticut bar member			
DATE SIGNED	08/06/2010			
FILING INFORMATION	APT - CO			
SUBMIT DATE Fri Aug 06 08:51:31 EDT 2010				
TEAS STAMP	USPTO/AAU-65.214.33.174-2 0100806085131379405-85045 359-47027728568951f07baf1 834578998d269-DA-6325-201 00805165621162451			

PTO Form 1583 (Rev 6/2005) ONB No. 06/ FD054 (EVS. 09/20/9011)

## Trademark/Service Mark Amendment to Allege Use (15 U.S.C. Section 1051(c))

To the Commissioner for Trademarks:

MARK: CRÈME DE LYS SERIAL NUMBER: 85045359

The applicant, Diageo Chateau & Estate Wines Company, having an address of 240 Gateway Road West
Napa, California 94558
US

is submitting the following allegation of use information:

For International Class 033:

Current identification: Alcoholic beverages except beers

The mark is in use in commerce on or in connection with all goods or services listed in the application or Notice of Allowance or as subsequently modified for this specific class

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 08/02/2010, and first used in commerce at least as early as 08/02/2010, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) a photograph of the goods.

Specimen File1

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for the allegation of use for 1 class.

#### **Declaration**

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

#### 

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Diane Plaut/ Date Signed: 08/06/2010

Signatory's Name: Diane Plaut

Signatory's Position: Attorney of record, Connecticut bar member

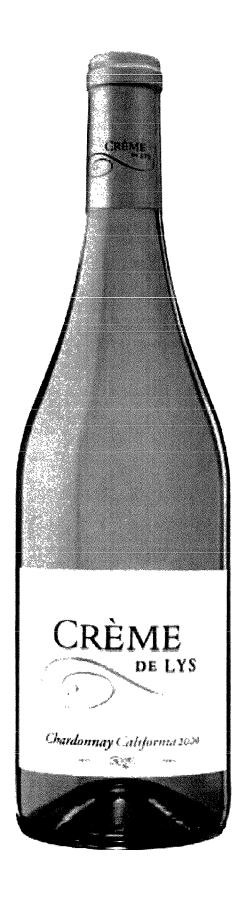
RAM Sale Number: 6325

RAM Accounting Date: 08/06/2010

Serial Number: 85045359

Internet Transmission Date: Fri Aug 06 08:51:31 EDT 2010 TEAS Stamp: USPTO/AAU-65.214.33.174-2010080608513137

9405-85045359-47027728568951f07baf183457 8998d269-DA-6325-20100805165621162451



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### **Response to Office Action**

#### The table below presents the data as entered.

Input Field	Entered		
SERIAL NUMBER	85045359		
LAW OFFICE ASSIGNED	LAW OFFICE 103		
MARK SECTION (no change)			
PAYMENT SECTION			
NUMBER OF CLASSES	1		
FEE PER CLASS	50		
TOTAL FEES DUE	50		
SIGNATURE SECTION			
RESPONSE SIGNATURE	/Dianc Plaut/		
SIGNATORY'S NAME	Diane Plaut		
SIGNATORY'S POSITION	Attorney of record. New York bar member		
DATE SIGNED	. 08/06/2010		
AUTHORIZED SIGNATORY	YES		
FILING INFORMATION SEC	l'ION		
SUBMIT DATE	Fri Aug 06 10:55:09 EDT 2010		
TEAS STAMP	USPTO/ROA-65.214.33.174-2 0100806105509831467-85045 359-470fbc5f8f8b4909384d1 25f77566553186-DA-7236-20 100806105230219728		

Response to Office Action

#### To the Commissioner for Trademarks:

Application serial no. 85045359 has been amended as follows:

#### FEE(S)

Fee(s) in the amount of \$50 is being submitted.

### SIGNATURE(S) Response Signature

Signature: /Diane Plaut/ Date: 08/06/2010

Signatory's Name: Diane Plaut

Signatory's Position: Attorney of record, New York bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

RAM Sale Number: 7236

RAM Accounting Date: 08/06/2010

Scrial Number: 85045359

Internet Transmission Date: Fri Aug 06 10:55:09 EDT 2010 TEAS Stamp: USPTO/ROA-65.214.33.174-2010080610550983

1467-85045359-470fbc5f8f8b4909384d125f77 566553186-DA-7236-20100806105230219728

#### RAM SALE NUMBER: 7236

RAM ACCOUNTING DATE: 20100806

INTERNET TRANSMISSION DATE:

SERIAL NUMBER:

2010/08/06

85/045359

Description	Fee Code	Transaction Date	Fee	Number Of Classes	Total Fees Paid
	7008	2010/08/06	50	1	50

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### Response to Office Action

#### The table below presents the data as entered.

Input Field	Entered		
SERIAL NUMBER	85045359		
LAW OFFICE ASSIGNED	LAW OFFICE 103		
MARK SECTION (no change)			
ARGUMENT(S)			
English translation of the mark. In respo	he Examining Attorney advised that Applicant must submit an onse. Applicant submits that there is no precise meaning of this CREAM OF THE LILY, and the necessary translation		
ADDITIONAL STATEMENTS SECT	TION		
TRANSLATION	The English translation of CRÉME DE LYS in the mark is CREAM OF THE LILY.		
SIGNATURE SECTION			
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .		
RESPONSE SIGNATURE	/Diane Plaut/		
SIGNATORY'S NAME	Diane Plaut		
SIGNATORY'S POSITION	Attorney of record, New York bar member		
DATE SIGNED	08/06/2010		
AUTHORIZED SIGNATORY	YES		
FILING INFORMATION SECTION			
SUBMIT DATE	Fri Aug 06 09:01:57 EDT 2010		
TEAS STAMP	USPTO/ROA-65.214.33.174-2 0100806090157547919-85045 359-4702cc26473d94153a734 2dd17bacd186af-N/A-N/A-20 100806085903374080		

of the mother of the comments of the control of the

#### **Response to Office Action**

#### To the Commissioner for Trademarks:

Application serial no. 85045359 has been amended as follows:

#### ARGUMENT(S)

#### In response to the substantive refusal(s), please note the following:

In an office action dated July 12, 2010, the Examining Attorney advised that Applicant must submit an English translation of the mark. In response, Applicant submits that there is no precise meaning of this phrase; however, the literal translation is CREAM OF THE LILY, and the necessary translation statement is included below.

#### ADDITIONAL STATEMENTS

#### Translation

The English translation of CREME DE LYS in the mark is CREAM OF THE LILY.

#### SIGNATURE(S)

#### **Declaration Signature**

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

#### **Response Signature**

Signature: /Diane Plaut/ Date: 08/06/2010

Signatory's Name: Diane Plaut

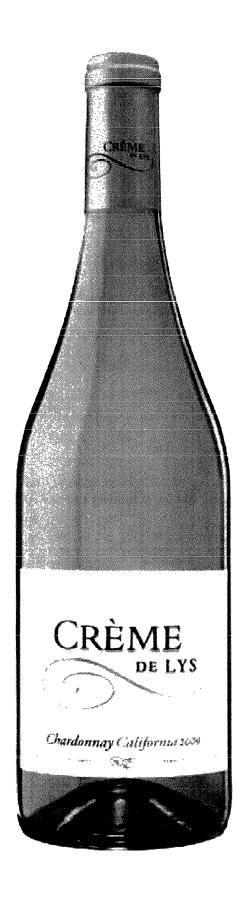
Signatory's Position: Attorney of record, New York bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 85045359

Internet Transmission Date: Fri Aug 06 09:01:57 EDT 2010 TEAS Stamp: USPTO/ROA-65.214.33.174-2010080609015754

7919-85045359-4702cc26473d94153a7342dd17 baed186af-N/A-N/A-20100806085903374080



To: Diageo Chateau & Estate Wines Company (trademarks@diageo.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85045359 - CRÈME DE LYS -

N/A

**Sent:** 7/12/2010 4:28:52 PM

Sent As: ECOM103@USPTO.GOV

**Attachments:** 

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85045359

MARK: CRÈME DE LYS

\*85045359\*

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/teas/eTEASpageD.htm

CORRESPONDENT ADDRESS:

DIANE PLAUT
DIAGEO NORTH AMERICA, INC.
801 MAIN AVE

NORWALK, CT 06851-1127

Diageo Chateau & Estate

Wines Company

APPLICANT:

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

**CORRESPONDENT E-MAIL ADDRESS:** 

trademarks@diageo.com

#### OFFICE ACTION

#### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 7/12/2010

#### TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT

FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. See 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus

applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. \$2.6(a)(1)(iv); TMEP \$819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

#### SEARCH RESULTS

The Office records have been searched and there are no similar registered or pending marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

#### \$50 ADDITIONAL FEE REQUIRED

Applicant must submit an additional application processing fee of \$50 per class because the application as filed did not meet the TEAS Plus application filing requirements. See 37 C.F.R. §\$2.6(a)(1)(iv), 2.22(a), (b); TMEP §\$819.01 et seq., 819.04. Specifically, the following application filing requirement(s) was not met: TRANSLATION OF FOREIGN WORDING IN THE MARK.

The additional fee is required even if applicant later corrects these application requirements.

#### TRANSLATION REQUIRED

Applicant must submit an English translation of the mark. 37 C.F.R. §2.32(a)(9); TMEP §809. The following translation statement is suggested: "The English translation of "CRÈME DE LYS" is \_\_\_\_\_." See TMEP §809.03.

/janice kim/ Trademark Examining Attorney Law Office 103 Phone - (571)272-8869 Fax - (571)273-8869

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <a href="http://teasroa.uspto.gov/roa/">http://teasroa.uspto.gov/roa/</a>. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For technical assistance with online forms, e-mail TEAS@euspto.gov.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does

not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <a href="http://www.uspto.gov/trademarks/process/status/">http://www.uspto.gov/trademarks/process/status/</a>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/teas/cTEASpageE.htm.

To:

Diageo Chateau & Estate Wines Company (trademarks@diageo.com)

U.S. TRADEMARK APPLICATION NO. 85045359 - CRÈME DE LYS -Subject:

N/A

Sent: 7/12/2010 4:28:56 PM

Sent As: ECOM103@USPTO.GOV

Attachments:

#### IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 85045359) has been reviewed. examining attorney assigned by the United States Patent and Trademark Office ("USPTO") has written a letter (an "Office action") on 7/12/2010 to which you must respond (unless the Office letter specifically states that no response is required). Please follow these steps:

1. Read the Office letter by clicking on this link http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial\_number=85045359&doc\_type=OOA& OR go to http://tmportal.uspto.gov/external/portal/tow and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

- 2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).
- 3. Respond within 6 months, calculated from 7/12/2010 (or sooner if specified in the Office letter), using the Trademark Electronic Application System (TEAS) Response to Office Action form. If you have difficulty using TEAS, contact TEAS@uspto.gov.

#### ALERT:

Failure to file any required response by the applicable deadline will result in the ABANDONMENT (loss) of your application.

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#	Total	Dead	Live	Live	Status/	Search
	Marks	Marks	Viewed	Viewed	Search	
			Docs	Images	Duration	
01	2591	N/A	0	0	0:06	*{"ck"}re\$m*[bi,ti] not dead[ld]
02	447103	N/A	0	0	0:07	*l{"iey"}*[bi,ti] not dead[ld]
03	726	N/A	0	0	0:01	I and 2
04	1547	N/A	0	0	0:02	I and "033"[cc]
05	503	0	503	0	0:02	3 and "033"[cc]
06	4299	N/A	0	0	0:02	de[bi,ti] and 2
07	2288	N/A	98	0	0:03	6 and "033"[cc]
08	1102	N/A	931	0	0:03	6 and (a b 200 "032" "033")[ic]
09	50	N/A	0	0	T/0:06	*1{"icy"}\$s*[bi,ti] and 6
10	3892	N/A	0	0	0:18	*I {"iey"} \$s*[bi,ti] and 6
11	2100	N/A	0	0	0:03	10 and "033"[cc]
12	1005	0	1005	0	0:03	10 and (a b 200 "032" "033")[ic]

Session started 7/12/2010 2:10:22 PM
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Sent to TICRS as Serial Number: 85045359

# CRÈME DE LYS

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## Trademark/Service Mark Application, Principal Register TEAS Plus Application

Serial Number: 85045359 Filing Date: 05/21/2010

NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

#### The table below presents the data as entered.

Input Field	Entered		
TEAS Plus	YES		
MARK INFORMATION			
*MARK	CRÈME DE LYS		
*STANDARD CHARACTERS	YES		
USPTO-GENERATED IMAGE	YES		
LITERAL ELEMENT	CRÈME DE LYS		
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.		
REGISTER	Principal		
APPLICANT INFORMATION			
*OWNER OF MARK	Diageo Chateau & Estate Wines Company		
*STREET	240 Gateway Road West		
*CITY	Napa		
*STATE (Required for U.S. applicants)	California		
*COUNTRY	United States		
*ZIP/POSTAL CODE (Required for U.S. applicants only)	94558		
LEGAL ENTITY INFORMATION			
*TYPE	CORPORATION		

	¥		
* STATE/COUNTRY OF INCORPORATION	California		
GOODS AND/OR SERVICES AND BASIS	INFORMATION		
*INTERNATIONAL CLASS	033		
IDENTIFICATION	Alcoholic beverages except beers		
*FILING BASIS	SECTION 1(b)		
ADDITIONAL STATEMENTS INFORMA	TION		
*TRANSLATION (if applicable)			
*TRANSLITERATION (if applicable)	1		
*CLAIMED PRIOR REGISTRATION (if applicable)	v v v v v v v v v v v v v v v v v v v		
*CONSENT (NAME/LIKENESS) (if applicable)			
*CONCURRENT USE CLAIM (if applicable)			
ATTORNEY INFORMATION			
NAME	Diane Plaut		
FIRM NAME	Diageo North America, Inc.		
STREET	801 Main Avenue		
CITY	Norwalk		
STATE	Connecticut		
COUNTRY	United States		
ZIP/POSTAL CODE	06851		
PHONE	203-229-2100		
FAX	203-845-5925		
EMAIL ADDRESS	trademarks@diageo.com		
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes		
OTHER APPOINTED ATTORNEY  Dana Gilland, Evan Gourvitz, Lauren Mandell, Jennifer Millones			
CORRESPONDENCE INFORMATION	······································		
*NAME	Diane Plaut		
FIRM NAME	Diageo North America, Inc.		

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Yes	
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/Diane Plaut/	
Dianc Plaut	
Attorney of record, New York har member	
05/21/2010	

#### Trademark/Service Mark Application, Principal Register

#### **TEAS Plus Application**

Serial Number: 85045359 Filing Date: 05/21/2010

#### To the Commissioner for Trademarks:

MARK: CRÈME DE LYS (Standard Characters, see mark)

The literal element of the mark consists of CREME DE LYS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Diageo Chatcau & Estate Wines Company, a corporation of California, having an address of

240 Gateway Road West Napa, California 94558

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

#### For specific filing basis information for each item, you must view the display within the Input Table.

International Class 033: Alcoholic beverages except beers

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Diane Plaut and Dana Gilland, Evan Gourvitz, Lauren Mandell, Jennifer Millones of Diageo North America, Inc.

801 Main Avenue Norwalk, Connecticut 06851 United States

The applicant's current Correspondence Information:

Diane Plaut
Diageo North America, Inc.
801 Main Avenue
Norwalk, Connecticut 06851

203-229-2100(phone) 203-845-5925(fax) trademarks@diageo.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

#### Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Diane Plaut/ Date Signed: 05/21/2010

Signatory's Name: Diane Plaut

Signatory's Position: Attorney of record, New York bar member

RAM Sale Number: 5517

RAM Accounting Date: 05/24/2010

Serial Number: 85045359

Internet Transmission Date: Fri May 21 17:47:06 EDT 2010 TEAS Stamp: USPTO/FTK-65.214.33.174-2010052117470665

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